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New accountability of  
Crown Corporations



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BP-137E

THE NEW ACCOUNTABILITY  
OF CROWN CORPORATIONS

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November 7, 1985



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Cat. No. YM32-2/137E

ISBN 0-660-12430-0



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THE NEW ACCOUNTABILITY OF CROWN CORPORATIONS

GENERAL INTRODUCTION

On September 1, 1984, substantial amendments to the Financial Administration Act (FAA) relating to the control and accountability of Crown corporations were proclaimed law. Experts differ on the extent to which these amendments have established an effective accountability regime.<sup>(1)</sup> In any event, it is probably premature to attempt a comprehensive evaluation of them, as little more than one year has elapsed since their proclamation

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(1) Contrast the remarks of the Macdonald Commission one year after the FAA amendments with those of the Auditor General at the time of the passage of the legislation:

- "...the proliferation of Crown corporations...has produced a growing component of the public sector, whose factual or legal independence seems to symbolize public authority which is beyond the effective control of Parliament and the executive"

Royal Commission on the Economic Union and Development Prospects for Canada, Report, Vol. 3, Minister of Supply and Services, Ottawa, 1985, p. 38.

- "...I am entirely supportive of...the proposed legislation...(it is) tangible evidence of action that will help alleviate my concerns (about the accountability of Crown corporations)"

Letter from the Auditor General to the Prime Minister, cited by Hon. André Ouellet, House of Commons, Debates, 23 March 1984, p. 2382.

date. It is possible however, and perhaps desirable, to describe the new Act systematically. In addition, many elements of the accountability process, e.g., corporate plans and special examinations, have either already appeared or are in advanced stages of development for some Crown corporations. It should therefore be possible to raise questions, in brief case studies, about the design and effectiveness of these accountability instruments.

The subject of Crown corporations' accountability to government and Parliament is a complex one, with an extensive history in recent events.(1) A great deal has been written on it which does not bear repetition here. Much of the thinking had to crystallize, however, in order to produce the existing package of FAA amendments.

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(1) Among many sources, from different perspectives:

- Privy Council Office, Crown Corporations Direction, Control and Accountability, Government of Canada's Proposals, Minister of Supply and Services, Ottawa, 1977.
- Royal Commission on Financial Management and Accountability, Final Report, Part IV: Crown Agencies, Minister of Supply and Services, Ottawa, March 1979.
- House of Commons, Bill C-27; An Act respecting Crown Corporations, 1st Session, 31st Parliament, 26 November 1979, 97 p.
- The Auditor General of Canada, Report to the House of Commons for the Fiscal Year Ended 31 March 1982, Chapter 2, Accountability of Crown-Owned Corporations; and
- House of Commons, Standing Committee on Public Accounts, Nineteenth and Twenty-Second Reports (respectively, the Crown Corporations and Canadair Reports), 1st Session, 32nd Parliament, 30 May 1983 and 17 November 1983.

## DESCRIPTION OF THE NEW FAA ACCOUNTABILITY REGIME

### A. Introduction

Crown corporations now report to government and Parliament in a variety of ways, some of which are quite different from those that existed under the old FAA. However, before describing these legislative provisions and the procedures and practices which are evolving to implement them, this report will consider a number of general constraints or caveats about the whole apparatus of accountability under the new FAA. Chief among these is the definition of "Crown corporation", what it includes and what it leaves out.

The Act defines Crown corporation as follows:

"Crown corporation" means a parent Crown corporation or a wholly-owned subsidiary

"parent Crown corporation" means a corporation that is wholly-owned directly by the Crown, but does not include a departmental corporation(1)

It follows that the term Crown corporation in the FAA does not apply to any corporation or subsidiary thereof that is not wholly-owned by the Crown. This has important consequences. The universe of Crown corporations falls into three spheres with regard to accountability and control under the FAA: (i) wholly-owned Crown corporations, both parents and subsidiaries,(2) which are subject to the FAA; (ii) wholly-owned

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(1) Financial Administration Act, R.S., c. 116, s. 95.(1) (cited hereafter as FAA). The difference between a departmental corporation (for example, National Museums of Canada) and a department of the government of Canada is a nominal one. (See FAA s.2).

(2) At present, there are approximately 50 parent wholly-owned Crown corporations and 134 of their subsidiaries (which, at the discretion of the Cabinet, may be subject to the accountability regime). See: Canada, President of the Treasury Board, Annual Report to Parliament on Crown Corporations, 1983-84, June 1985, p. iii.

Crown corporations which have been exempted from all or part of the accountability provisions of the FAA;(1) and (iii) non-wholly-owned, government-controlled corporations which are excluded by definition. Thus, if Petro-Canada, which at this writing is a wholly-owned parent Crown corporation, were to be privatized, even in terms of a small, non-controlling interest being sold to private concerns, more than \$9 billion in assets(2) would move from the FAA accountability and control regime.

The Public Accounts Committee has commented on this question of a Crown corporation's being excluded from the accountability regime by virtue of not being wholly-owned. In its Nineteenth Report, the Committee noted:

...your Committee wishes to direct its comments to all corporations that are controlled by the Government and will therefore use the phrase "government-controlled corporation" to refer to corporations which are either wholly-owned by the Government or controlled by the Government through partial ownership.(3)

The Committee went on to recommend the establishment of a "Ministry for Government-Controlled Corporations" to oversee an exhaustive accountability regime. In his reply to the Committee, Prime Minister Trudeau was less than enthusiastic:

The term government-controlled corporations can be interpreted to include joint venture or mixed enterprise bodies in which the government has a controlling interest (whether this should be defined as the government being the majority or largest shareholder is not indicated). Such companies involve the government in

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(1) e.g. Bank of Canada, Canada Council, CBC., etc.; see FAA s. 96.

(2) Petro-Canada, 1984 Annual Report, p. 26.

(3) Canada, House of Commons, Standing Committee on Public Accounts, Nineteenth Report, 1st Session, 32nd Parliament, 30 May 1983, para. 3.

entrepreneurial associations...The application of an accountability regime...raises a number of legal and practical questions that need careful review and this is underway.(1)

The review that Mr. Trudeau referred to has not yet been, and may never be, completed.(2) The Public Accounts Committee was, however, seeking, as he pointed out, a more comprehensive accountability regime than one strictly limited, as in the present FAA, to wholly-owned Crown corporations and their subsidiaries. The present Government's stated intention of pursuing the privatization of Crown corporations raises the question of the exclusion from accountability of huge corporations, which may continue to be controlled by the government.

Also bearing upon this discussion of the accountability of Crown corporations is the danger of generalizing about them. Crown corporations come in many varieties - from those with a few hundred employees with one or two million dollars of assets, to those with many thousands of employees and billion-dollar assets. For each accountability instrument, there is an exception which may well be authorized by the Act incorporating the corporation in question. Many parent corporations, e.g., Air Canada or Canada Post Corporation, have extensive legislation of their own. Other corporations represent the other extreme, e.g. Via Rail, which was established by a one-dollar-vote in an Appropriation Act.

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(1) Can., H. of C., P.A.C., 92A:41,42, Appendix "Publ.-141", letter dated September 26, 1983 from Prime Minister Trudeau to Mr. Doug Lewis, M.P.

(2) In his 1985 Annual Report the Auditor General has included a chapter on the accountability of mixed and joint federal government corporations (Chapter 5).

## B. Accountability to Government

Accountability to government of Crown corporations is based on an interesting contradiction - the need to balance commercial independence with the prerogatives of ownership and control.<sup>(1)</sup> The corporate form was adopted by the federal government to enable these entities to function effectively in a business-like way, free of the bureaucratic constraints of a department of government. In this way, a specific task could be carried out on behalf of, but not directly by, the government.

In general, the new FAA establishes and enhances a number of instruments of accountability to government. Implicit in the Act also are a number of precepts for how the government should exercise its ownership rights. Chief among these is the role of the Minister responsible, according to the doctrine of ministerial responsibility. In the policy statement related to an early draft of the FAA amendments, this role was emphasized:

What is needed is not an indiscriminate increase in controls and legislation, but the establishment of effective support for Ministers...to provide needed direction, control and accountability.<sup>(2)</sup>

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(1) The policy of the Trudeau government in amending the FAA was expressed as follows:

- "The amendments...are designed to improve the... capability of the government to act as (an) effective shareholder (of) wholly-owned corporations"
- "This relationship requires a careful balance (between) ...ensuring that corporations can be directed, held accountable (and)...(the) essential need for a flexible relationship (to allow) corporations to operate effectively...in accordance with sound business practices"

Source: Government of Canada, Policy Statement (Amendments to FAA), 30 June 1982, in Can., H. of C., P.A.C., 67A:20, 15 February 1983.

(2) Ibid., p. 67A:21.

**Major Instruments of Accountability to Government under the FAA**

<b>Item (in order of appearance in FAA)</b>	<b>Old FAA (R.S., 1970, c.F-10 as amended)</b>	<b>New FAA (R.S., 1984, c.116)</b>	<b>Description (Current FAA)</b>
- Subsidiaries' accountability	Did not apply	s. 97(2)	wholly-owned subsidiaries of wholly-owned parent Crown corporations may, by order of the Governor in Council, be subject to the same accountability regime as their parents.
- Directives	Did not apply	s. 99	Governor in Council empowered, on recommendation of the appropriate Minister, to issue directives, "deemed to be in the best interest of the corporation".
- Acquisitions	Did not apply	s. 101	No substantive acquisitions (or shares) in another corporation without Governor in Council order to do so.
- Directors and Officers	Did not apply	s. 114-122	Appointment (removal), remuneration, of directors by Governor in Council; directors responsible for management.
- By-laws	Did not apply	s. 123(3)(4)	Governor in Council empowered to make, amend or repeal by-laws and make regulations re: by-laws.
- Corporate plans and budgets	s. 70 (1)(2), annual operating and capital budgets required (operating for Schedule C only)	s. 129	Annual corporate plans, operating budgets, and capital budgets required of each parent Crown corporation in a form prescribed by Treasury Board, under Governor in Council regulations. Revisions to said plans/budgets to be similarly approved.
	s. 75 (4) - reports on financial affairs as required by appropriate Minister.		

Table I (cont'd)

Major Instruments of Accountability to Government under the **FAA**

Item (in order of appearance in <b>FAA</b> )	Old <b>FAA</b> (R.S., 1970, c.F-10 as amended)	New <b>FAA</b> (R.S., 1984, c.116)	Description (Current <b>FAA</b> )
- Borrowing	s. 72 - Loans from Consolidated Revenue Fund (CRF), approved by Governor-in-Council.	s. 134	Borrowing requires approval of Minister of Finance and reporting in corporate plan, etc.
- Bank/Receiver general Accounts	s. 71	s. 135-137	Bank/Receiver General accounts allowed. Role of Minister of Finance to approve overseas bank accounts and direct accounts in URF.
- Auditor's Reports*	s. 77	s. 139	Form of Auditor's report to be set by Treasury Board, by regulation (general provisions outlined).
- Special Examination*	Did not apply	s. 143	Value-for-money audit required once every five years.
- Reports (General)	s. 75(4)	s. 151	Treasury Board, or appropriate Minister, has access to such accounts, budgets, returns, books, reports or other information as they may require.
- Annual Reports	s. 75(3)	s. 152	Annual reports, in the form set by Treasury Board (by regulation) required (general provisions outlined).

Notes: \* Auditor's reports and Special Examinations will be discussed in detail in section (b) below.

Another precept of the new FAA is that the accountability regime of the Canada Business Corporations Act (CBCA), whereby the responsibilities of directors and officers to the shareholders are established in law, has, in effect, been transposed to the FAA.(1)

Of the twelve instruments of accountability to government listed in Table I, the budget or corporate plan, annual report and directive powers are perhaps the most important. Audit provisions, also of great importance, will be discussed in a later section of this paper. In connection with annual and other reports it is essential to note the regulatory powers of the Treasury Board, in addition to those of the appropriate Minister. As a complement to ministerial responsibility, the Treasury Board is to oversee the activities of Crown corporations and ensure that the government is kept fully informed of their behaviour. To this end, the Treasury Board Secretariat and the Department of Finance have overhauled the Crown Corporations Division (CCD) which now carries out the regulatory functions assigned to both Finance and Treasury Board.(2)

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(1) When the FAA amendments were introduced, the President of the Treasury Board noted:

- "direct responsibility for...management rests with the Board of Directors (whose duties) are stated in the legislation...the device (to do this) is to restate the duties, responsibilities and conflict-of-interest provisions applying to directors as they are set out for private sector companies in the Canada Business Corporations Act".

Source: Canada, President of the Treasury Board, New Legislative Proposals for the Control and Accountability of Crown Corporations, March 1984.

(2) "New Federal Crown Corporations Directorate Established", Government of Canada, News Release, Ottawa, May 11, 1984.

### C. Accountability to Parliament

Because of the practical necessity of having a minister, who sits in Parliament, answer to Parliament for the affairs of the corporation, accountability of Crown corporations to Parliament tends to be derivative of their accountability to government.(1) Using the formula of "who is accountable to whom for what," the Parliamentarian might raise the following questions about Crown corporations:

1. What does the Minister know about the activities of the corporations for which he is responsible and what can he tell Parliament on a day-to-day basis?
2. How closely do the Minister and his officials monitor his corporations on behalf of Parliament?
3. Are Boards of Directors and management directly answerable to Parliamentary committees when annual reports, directives and corporate plans are considered in these committees?
4. Can the contents of corporate plans, annual reports, etc. be trusted? Do they accurately and completely depict the planned and actual behaviour of the corporation?

A review of the accountability provisions of the new FAA helps to answer some of these questions, but not others. Table II summarizes the instruments of accountability to Parliament under the new FAA. Later in this paper, case studies of individual Crown corporations will also address these accountability issues.

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(1) The section of the FAA subtitled "Accountability to Parliament" is therefore worded as follows:

"98.1 Each Crown corporation is ultimately accountable, through the appropriate Minister, to Parliament for the conduct of its affairs"

Accountability to Parliament is put in terms of the Minister's role.

**Table II**  
**Major Instruments of Accountability to Parliament under the FAA**

Item (in order of appearance in FAA)	Old FAA (R.S., 1970, c.F-10 as amended)	New FAA (R.S., 1984, c.116)	Description (Current FAA)
- Addition to (deletion from) Schedules	s. 66(3)	s. 2.1,2,2	Location on a schedule determines the nature and extent of the accountability regime; Governor in Council orders to add (delete) are tabled and referred to committee.
- Directives	Did not apply	s. 99(4)	The appropriate Minister tables a directive in Parliament within 15 days after it is given by the Governor in Council.
- Acquisition, Creation, Disposal	Did not apply	s. 100	All these transactions require parliamentary authorization (though authorization need not precede the event)
- Borrowing (a)	Repealed	N/A (Such funding now appears to be by non-budgetary appropriation)	
	Did not apply	s. 110	Agent Crown corporation must be empowered by Act of Parliament to borrow money, except from Crown.
- Summaries of Corporate plans or budgets	s. 70(2) - capital budgets of agency corporations tabled annually	s. 132	Annual tabling of summary of corporate plan, operating budget or capital budget, or amendment(s) thereto, after approval by Minister and Treasury Board.
- Auditor's report*	Did not apply*	s. 139(2)(b)	Auditor to call attention to any other matter falling within the scope of his examination that, in his opinion, should be brought to the attention of Parliament.

Table II (cont'd)

## Major Instruments of Accountability to Parliament under the FAA

Item (in order of appearance in FAA)	Old FAA (R.S., 1970, c.F-10 as amended)	New FAA (R.S., 1984, c.116)	Description (Current FAA)
- Auditor General's role (a)*	s. 67(2)	s. 141(2)	Eligibility of AG for appointment.
(b)*	Did not apply	s. 141(2)	AG to be auditor/joint auditor of all Part I (Schedule C) parent Crown corporations by January 1, 1989.
(c)*	Did not apply	s. 145	Auditor/examiner may at any time consult with AG.
(d)*	Did not apply	s. 143(10)	For a report to Parliament under s. 143(10), special examination of a Part I (Schedule C) corporation, AG to be informed.
- Special Examination*	Did not apply	s. 143(10)	Report, after consultation with Minister, to Parliament as a result of certain findings of a value-for-money audit (special examination).
- Annual Report	s. 75(3)	s. 152	Submitted to Minister within 3 months after termination of financial year, and tabled 15 days after Minister's receipt thereof.
- Annual Consolidated Report	Did not apply	s. 153	Annual report tabled by President of Treasury Board re: numbers of Crown corporations, with employment and financial data.
- Quarterly Report	Did not apply	s. 153.1	President of Treasury Board's quarterly report on Crown corporations' timeliness in tabling of documents required by FAA.

Note: \* Role of auditors (including Auditor General) will be discussed in section (b) below.

New major accountability instruments include directives, the requirement that creation, disposal or acquisition of Crown corporations be authorized by Act of Parliament, and summaries of corporate plans. As will be outlined below in the case study of Canadian National's annual reports, annual reports have also been overhauled as an accountability instrument in the new FAA - there is now provision for substantial evaluative content, comparable to the Part III of the Estimates for government departments. Another important new provision, special examinations or value-for-money audits, may also be reported to Parliament under extraordinary circumstances.(1)

A different order of new accountability instrument is the annual report of the President of the Treasury Board to Parliament, on numbers of Crown corporations, employment and financial data; in addition, on a quarterly basis, there is a report on corporations' timeliness in tabling of documents. (Actually the Minister responsible for each corporation tables documents, but Treasury Board sets deadlines for submissions - with tabling "due dates" calculated accordingly, based on applicable FAA provisions.) The Auditor General attests to the accuracy of each quarterly, but not the annual, report.(2) Unique to the new annual report, beyond certain differences in summary information, is a listing of "other corporate interests" of the Crown, under s. 153(3)(a) of the new FAA. An inspection of this first such annual report reveals, however, extensive duplication of Volume III of the Public Accounts in that summary tables and financial statements of all parent Crown corporations appear in both documents. This apparent duplication with the Public Accounts is questionable in light of Section 158 of the FAA:

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- (1) Examiners of Part I (Schedule C) corporations, after consultation with the appropriate Minister, may bring a matter to the attention of Parliament, if, in their opinion, it is warranted. See: FAA s. 143(10).
- (2) FAA, s. 153, 153.1(2). Over the first four quarterly reports, approximately 50% of the internal deadlines have been met. Source: Interview with CCD, 30 September 1985.

Whenever...any account, statement, return or document required [to be tabled in Parliament]...contains the same...or less information than is contained in the Public Accounts...the Governor-in-Council may direct that the account, return or statement be discontinued...

It should also be noted that the first annual report, dated June 1985, is transitional, based on data from the 1983-84 financial period. For most Crown corporations the financial year was April, 1983 to March 31, 1984, though there were some exceptions.<sup>(1)</sup> Current plans call for additional information to be provided in the first "normal" annual report, due to be tabled by December 31, 1985 and covering the 1984-85 reporting period.

#### D. Audit Provisions<sup>(2)</sup>

Areas of audit under the new FAA may be grouped in three distinct categories: 1) the attest or financial audit provisions including the audit of "quantitative information" to be contained in corporations' annual reports; 2) the special examination provisions; and 3) internal audit provisions. Audit is not strictly an accountability to Parliament issue under the new FAA. The line of reporting to Parliament is narrowly defined and may be expected to arise only in extraordinary circumstances. It is accountability to the Board of Directors that lies at the heart of the audit provisions. More particularly, the Audit Committee of the Board has been established in law and given extensive responsibilities with respect to audits of all types.

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(1) Canada, President of the Treasury Board, Annual Report to Parliament on Crown Corporations and Other Corporate Interests of Canada 1983-84, June, 1985, p. iii.

(2) This discussion is based on Sections 138-153 of the FAA and has benefited greatly from my attendance at the Auditor General's Workshop, The Audit and Special Examination Provisions of the FAA - Experience of the First Year, Ottawa, 21 October 1985 (to be published shortly).

The Minister responsible for the Crown corporation continues to be a central figure in the general accountability framework in that he receives reports to be tabled in Parliament (the annual attest audit, which is included in the corporation's annual report) and Treasury Board may make regulations in a number of audit areas. However, the special examinations do not normally go to the Minister, but rather to the Board of Directors. Accountability to Parliament is more specifically provided for through the Auditor General, who is required to be involved when the extraordinary report to Parliament arises and to whom the audit provisions give an important consulting role. The Auditor General is also required to be at least the joint auditor of all Part I, Schedule C parent Crown corporations by January 1, 1989.(1)

The first area of audit to be covered by the amendments to the FAA is the traditional attest or financial audit which is now clearly specified, at greater length than formerly in the CBCA, including provisions governing the following: "quantitative information", "authority"; "any other matter"; and Treasury Board's power to make detailed regulations. "Quantitative information" refers to the auditors' new role of certifying that the quantitative information which Treasury Board may require the corporation to include in its annual report is "accurate in all material respects". "Authority" provisions refer to the corporation's transactions being within its mandate. The "any other matter" provision refers to matters that the auditor feels should be brought to Parliament's attention and is very much like Section 77(1) of the old FAA. Other additions to the attest role, however, such as the audit of quantitative information, are quite innovative. These additions to the traditional attest role, especially in commercially-oriented Crown corporations, are something of a curiosity in that the auditing profession has for many years had "generally accepted accounting standards" (GAAS), which are explicit guidelines for

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(1) FAA, s. 141(2). This excludes Part II, commercially independent, parent Crown corporations, e.g. Air Canada, Petro-Canada, etc.

auditors on the conduct of the annual financial audit. It is intriguing that Treasury Board may now promulgate regulations in these areas that, in Canada, have traditionally been left up to the profession.<sup>(1)</sup>

To describe briefly the special examination provisions, the concept of which others are hard at work defining and elaborating on, is a daunting task.<sup>(2)</sup> It is an understatement to say that they are not well understood. Even auditors in the field, who will be called upon to execute special examinations for all parent Crown corporations by September 1, 1989,<sup>(3)</sup> puzzle over criteria and auditing standards. In a recent workshop, the Auditor General developed a pro forma "opinion" that might issue from a special examination. It was generally argued by participants, however, that the Auditor General's documentation, though based on seven years of comprehensive auditing, was far short of the mark. Examiners will have to learn by doing and the first special examination will, in effect, be a costly experiment.

Central to special examination are the "three e's" of economy, efficiency and effectiveness. The examiner must render an opinion on whether or not there is "reasonable assurance" that:

- (a) the assets of the corporation and each subsidiary were safeguarded and controlled; and

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- (1) The Canadian Institute of Chartered Accountants is also developing public sector accounting and auditing standards through its Public Sector Accounting and Auditing Committee.
- (2) The Canadian Comprehensive Auditing Foundation (CCAF) is sponsoring an extensive research study in the field. See: CCAF, Preparing for Special Examinations: A Status Report, September 1985, p. 22.
- (3) Five years after proclamation date. See: FAA, s. 143(2).

(b) the financial, human and physical resources of the corporation were managed economically and efficiently and the operations of the corporation and each subsidiary were carried out effectively<sup>(1)</sup>

Quite apart from the many judgment calls inherent in words like "reasonable assurance" and "significant deficiencies," the new FAA has opened up the effectiveness area in a manner quite unprecedented in comprehensive auditing. The Auditor General, in Section 7 of his Act, has a very limited effectiveness mandate in his value-for-money auditing. He must inform the House of Commons of cases where "satisfactory procedures have not been established to measure and report the effectiveness of programs, where such procedures could appropriately and reasonably be implemented" (emphasis added).<sup>(2)</sup> In practice, this provision has been interpreted to mean that the Auditor General does not call into question the policy behind a program. He does not evaluate the program but rather its economy and efficiency, with a look at procedures in place to report on effectiveness. Moreover, the Auditor General reports negatively: where there has not been due regard, et cetera. On the surface, at least, it would appear that special examinations require a positive test of management's assertions. But the liability inherent in an auditor's signing off any examination he has conducted, be it attest audit or special examination, probably will dictate a more negative assessment. The auditor (read examiner) is called upon to give the Crown corporation a "clean bill of health" and he does so advisedly, based on clearly understood concepts of legal liability.

The other audit area enacted in the new FAA relates to internal audit. This is formally established in each parent Crown corporation, as is the function of the Audit Committee of the Board of Directors to oversee it. This is not a new corporate function, but it is interesting to note its elaboration at length in statute law.

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(1) FAA, s. 143(1).

(2) Auditor General Act, S.C. 1977, c. 34, s. 7.

## CASE STUDIES

### A. 1985-89 Corporate Plan of Export Development Corporation

The Export Development Corporation (EDC) promotes exports of Canadian companies by arranging financing and providing insurance services. In 1983, the financial year upon whose results the 1985-89 Corporate Plan was based, EDC had a net income of \$1.9 million based on financial flows from outstanding loans of \$5,051 million.(1) As a Part I, Schedule C Crown corporation, which is not commercially independent of the government, EDC, in 1983, made a "profit" and was not dependent on appropriations to balance its books.

Bearing in mind the September 1, 1984 proclamation date of the new FAA, EDC was very early on the scene with this corporate plan. Regulations, which are now close to promulgation, were in a rudimentary state and little practical direction could have been provided by the departmental officials to guide EDC in the preparation of this, perhaps experimental, corporate plan. However, the plan went full circle - it was approved by the government (after being submitted on time) and tabled in Parliament and considered in the Standing Committee on Finance, Trade and Economic Affairs.(2)

From an accountability to Parliament standpoint, the EDC plan represented a quantum leap forward over planning documentation tabled under the old FAA.(3) Under the new Act, many complex stipulations govern the contents of corporate plans, although it is perhaps fair to say that government - not Parliamentary - control was the chief concern in the design of these provisions. It is a summary which comes to Parliament, not the complete document. What is to be included in these summaries and, indeed,

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(1) EDC, 1985-89 Corporate Plan, October 1984, p. 30. (Cited hereafter as EDC Plan).

(2) Canada, House of Commons, Standing Committee on Finance, Trade and Economic Affairs, 25 February 1985, Issue No. 11.

(3) Only annual capital budgets were required under repealed Section 70(2) of the FAA.

the details of the corporate plans themselves are described in draft regulations which, at this writing, are close to finalization.<sup>(1)</sup> More generally, the new FAA sets out some fairly detailed instructions:

- (3) The corporate plan of a parent Crown corporation shall include a statement of
  - (a) the objects or purposes for which the corporation is incorporated, or the restrictions on the businesses or activities that it may carry on, as set out in its charter;
  - (b) the corporation's objectives for the period to which the plan relates and for each year in that period and the strategy the corporation intends to employ to achieve them; and
  - (c) the corporation's expected performance for the year in which the plan is required by the regulations to be submitted as compared to its objectives for that year as set out in the last corporate plan and any amendment thereto pursuant to this section.<sup>(2)</sup>

Further particulars to this section have been specified in draft regulations. However, these were not so specified at the time of the preparation of the EDC plan under review here. For completeness, and as a guide to other corporate plans, the draft regulations governing summaries will be cited here:

8. A summary of the corporate plan or amended corporate plan shall include...
  - (a) the authority for incorporation;
  - (b) the statements required by subsections 129(3) and 134(1) of this Act;
  - (c) a description of the major assumptions used in preparing the corporate plan or amended corporate plan and of the sensitivity of the projections in these documents to changes in those assumptions;

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(1) Interviews with Crown Corporations Division, 30 September 1985 and 23 October 1985.

(2) FAA s. 129(3).

(d) the financial results for the financial year immediately preceding the current year, the financial results currently projected for the current year, and the financial plan for the planning period, including for each year:

- (i) the statements of income and retained earnings;
- (ii) the statements of changes in financial position, including all cash flows;
- (iii) the balance sheets; and
- (iv) other relevant statistical data, including the number of employees and the indicators or targets which would help measure the corporation's performance against its objectives;

(e) other information as is necessary to support or explain information given in that summary; and

(f) where the corporation intends to seek appropriations within any of the first four years of the planning period and the financial year of the corporation is different from that of the Government, a reconciliation... (to) the Government's fiscal year.<sup>(1)</sup>

Two issues with respect to EDC's corporate plan will be discussed in this case study: the treatment of the "concentration" of EDC's business among a few, relatively large firms; and the analysis supporting the pro forma projection of dollar volumes of financing, insurance and net income over the 1984 to 1989 period.

The Government has recently formulated the concentration issue concisely:

While EDC has done a fair amount to increase its business with small and medium-sized firms, the fact remains that a small number of large companies account for the bulk of EDC's financing.<sup>(2)</sup>

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(1) Canada, Treasury Board, Crown Corporations Division, Draft Regulations (FAA, s. 133), 7 October 1985.

(2) Canada, Export Financing, Consultation Paper, Ottawa, January 1985, p. 9.

References to this issue are in a number of places in the EDC plan, notably under a section of the corporate overview which discusses "EDC clientele" and under the "corporate strategies" rubric. When EDC reviewed its clientele, it stated that it had "...developed and introduced a number of services designed specifically to enhance its support of small and medium-sized transactions."<sup>(1)</sup> Under corporate strategy, EDC noted that "(it) will continue to provide advice...especially (to) first time exporters and small businesses".<sup>(2)</sup> By way of support for these assertions, EDC presented comparative data:

On the financing side, in 1982, of the 110 transactions completed, there were 44 export financing transactions under \$1 million worth \$12.753 million; in 1983, of the 45 transactions financed, 15 worth \$4.958 million were under \$1 million.<sup>(3)</sup>

EDC presented data in the same format on the insurance side of its business.<sup>(4)</sup>

One has difficulty in concluding from this information, assuming this is why it is included, that EDC has made progress in reducing concentration. One would have to know the dollar figures corresponding to the 66 transactions in 1982 and the 30 transactions in 1983 worth over \$1 million. Also, if the number of transactions is itself declining, might this not say something about concentration? Such indeterminate presentation of data does not serve well the statutory provisions governing the content of corporate plans. Of course, it is unfair to single out this item as being in any way representative of the document as a whole. Every effort is now being made by the responsible officials and officers of Crown corporations to improve the quality of the data coming to the government and Parliament.<sup>(5)</sup>

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(1) EDC Plan, p. 15.

(2) Ibid., p. 19.

(3) Ibid., p. 15.

(4) Ibid.

(5) Interviews with CCD, 30 September 1985 and 23 October 1985.

The other issue of this case study relates to the interesting pro forma projection of EDC's 1984 to 1989 financing, insurance and net income. The data are presented in Table III.

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Table III  
1984-1989 EDC Statement of Operating Objectives  
(\$ millions)

	1984 Estimate	1985 Objective	1986 Projection	1987 Projection	1988 Projection	1989 Projection
Financing	1,000	1,000	1,050	1,100	1,155	1,210
Insurance	2,500	2,705	2,910	3,130	3,360	3,615
Net Income	1	1	2	7	8	1

Source: EDC Plan, p. 24.

Unquestionably, EDC was more than forthcoming in providing these data. When it appeared before the Finance Committee, however, EDC was asked to provide 1984 actual data, which were then available. Unfortunately, there were some discrepancies between the estimated and actual data.(1) When, because of these discrepancies, MPs in the Finance Committee called EDC's numbers into question EDC had to scramble to provide answers, because the assumptions supporting the data shown in Table III were not laid out in its corporate plan. Such gaps in the presentation of information in corporate plans may cause serious concern if not remedied in the near future.

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(1) Notably in net income, which was \$6,483,000 in 1984. See EDC, 1984 Annual Report, p. 16. See also: Can., H. of C. Finance, 25 February 1985, 11:9.

**B. Annual Reports of Canadian National**

Canadian National (CN) is a parent Crown corporation, scheduled under Schedule C, Part II of the FAA; CN therefore is deemed to:

- (a) operate in a competitive environment; and
- (b) not to be ordinarily dependent on appropriations for operating purposes<sup>(1)</sup>

CN is one of the largest Crown corporations - 1984 assets exceeded \$7 billion;<sup>(2)</sup> it is a diversified transportation company with in excess of 65,000 employees. The major component of CN is CN Rail, which operates the largest national rail system in Canada (and smaller rail lines in the U.S., e.g. the Grand Trunk).

CN provides Parliament with a consolidated annual report on its operations. This annual report, in common with many private sector companies' reports, is in two parts: a narrative description of the company's business affairs and a financial review together with audited financial statements. The first part of the report is generally promotional, the second part, factual. The format of CN's annual report is significant in that the new FAA may cause changes in it.<sup>(3)</sup> Although the FAA now includes provisions allowing Treasury Board to elaborate on the requirements for annual reports by regulation, in practice the Crown

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(1) FAA, s. 2.1(6).

(2) CN, 1984 Annual Report, p. 34.

(3) The FAA specifies the content of the annual report, in general terms, calls for it to be submitted to the appropriate Minister and the President of the Treasury for approval by a three-month deadline after the end of the financial year, and requires its tabling in Parliament within 15 sitting days of such approval. Treasury Board can also specify the annual report's content in detail, by regulation. See: FAA, s. 152.

Corporations Division is several years away from developing such detailed regulations,(1) as this will involve extensive consultations with the private sector and with provincial securities' regulators. However, existing general provisions of the FAA raise interesting questions. Annual reports of parent Crown corporations must now include the following:

- (a) the financial statements of the corporation...,
- (b) the annual auditor's report...,
- (c) a statement on the extent to which the corporation has met its objectives for the financial year,
- (d) such quantitative information respecting the performance of the corporation, including its wholly-owned subsidiaries...as the Treasury Board may require..., and
- (e) ...other information as is required by this or any other Act of Parliament, or by the appropriate Minister, the President of the Treasury Board or the Minister of Finance...<sup>(2)</sup>

On the basis of Section 152(3), one could draw a comparison between the Part III of the Estimates for a department or agency of government and a parent Crown corporation's annual report - both are evaluative and assess performance against previously-specified objectives. Both are accountability instruments that go to Standing Committees of the House of Commons. But the Part IIIs are up and running as accountability instruments (though their quality is another question). The annual report, in contrast, is in its formative stages as an accountability document, with gaping deficiencies in terms of form and content.

In this case study, two situations will be discussed, one involving the 1980 annual report and the other involving the 1984 annual report.<sup>(3)</sup>

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(1) Interview with officers of CCD, 11 October 1985.

(2) FAA, s. 152(3).

(3) To some extent, this represents a "before and after" view of the new FAA accountability regime. However, both of these cases arose in Committee proceedings, the earlier one in the Public Accounts Committee and the later one in the Transport Committee.

The situation with respect to the 1980 Annual Report hinged on the timing as well as on the content of the report and other documents tabled in Parliament. At issue were double payments to CN from the government through the Department of Transport and the Canadian Transport Commission.

The President's introductory letter to the 1980 report made specific reference to the double payments, calling them a "windfall".<sup>(1)</sup> However, the matter was not stated as a questionable use of public funds and was not put in an evaluation context.

In his 1981 Annual Report (tabled in December 1981 for the fiscal year ended March 31), the Auditor General, in paragraph 15.6, disclosed that CN, in his view,<sup>(2)</sup> had received double payments.<sup>(3)</sup> The Public Accounts Committee considered this audit note in May 1982 and reported it in July.<sup>(4)</sup> The Committee found that although CN was not culpable, double payments had indeed been made through an oversight in the Department of Transport.

One month after the Public Accounts Committee's hearings, the Commons Standing Committee on Transport called the 1980 and 1981 CN annual reports.<sup>(5)</sup> In the case of the 1980 report, this represented approximately a one-year delay between preparation of the report based on the 1980 corporate financial year and Transport Committee consideration as mandated in CN's Act.<sup>(6)</sup> A review of the Transport Committee's

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(1) CN, Annual Report, 1980, p. 6.

(2) CN, to this day, does not agree that these were double payments. See: Canada, House of Commons, Standing Committee on Transport, 4 June 1985, 15:19.

(3) Canada, Auditor General, Annual Report, 1981, paragraph 15.6.

(4) Canada, H. of C., P.A.C., 19 May 1982, Issue 56 and Seventeenth Report, 29 July 1982.

(5) Canada, H. of C., Transport, June 1982, Issues 67-69 incl.

(6) An Act respecting Canadian National Railways, R.S.C. 1970, Chapter C-10, as amended, s. 38(1.1).

deliberations reveals a focus on pension-related issues. One Committee member had become aware of the proceedings of the Public Accounts Committee on double benefits and therefore raised this matter briefly in the testimony.(1) In the report associated with this issue, the Transport Committee did not refer to double payments.(2)

It should also be noted that CN's audited financial statements in Volume III of the Public Accounts for 1981, which appeared in October of that year, contain no information additional to that contained in the 1980 report. A perusal of Volume II, the detailed accounts of the Department of Transport and the Canadian Transport Commission also leaves one no wiser.

It is extremely doubtful that the double benefits would have come to light via the annual report. In fact, it was only by happy coincidence that the Auditor General's Report and the Public Accounts Committee's consideration of it preceded the much delayed Transport Committee hearings on CN.

The second part of this case study involves CN's 1984 annual report and the Government's decision to establish CN Marine, formerly a CN subsidiary, as a separate Crown corporation.

When CN appeared before the Transport Committee in June 1985 on its 1984 annual report, the following exchange took place:

Mr. Ouellet (L. Papineau): Dr. Le Clair, was the CN Board of Directors consulted before the decision was made to create a separate body called CN Marine?

Dr. Le Clair (CN Chairman and CEO): Mr. Chairman, the answer is short and simple: no.(3)

The Government, in its "Expenditure and Program Review" as reported in the economic statement of November 1984 had decided to cut administrative costs and, as part of this exercise, had decided that \$21.5

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(1) Canada, H. of C., Transport, 10 June 1982 68:73.

(2) Can., H. of C., Transport, Twelfth Report, 30 June 1982.

(3) Can., H. of C., Transport, 4 June 1985, 15:14,15.

million could be saved by establishing CN Marine as a separate Crown corporation.<sup>(1)</sup> The effects of the Government's decision were duly recorded in Dr. Le Clair's overview letter introducing his 1984 annual report:

Late in the year the Government of Canada decided to establish CN Marine as a separate Crown corporation, as of January 1, 1985. The financial results of CN Marine for 1984 are therefore shown separately in this report, as an operation being discontinued. Since CN Marine has been making a positive contribution to corporate finances the decision to set up a separate corporation will have some adverse effect on CN's cash flow and on its ability to generate badly needed capital in the immediate future.<sup>(2)</sup>

Because the expenditure review process was secret, there was no consultation with CN on the CN Marine breakout. But the question arises: why was the directive power of Section 99 of the new FAA not used? This would have provided a clear accountability channel and Parliament would have been afforded an opportunity to debate the specifics of the measure within 15 days of its being given to CN (Section 99(4)). Instead, eight months after the fact, there was a terse comment in CN's annual report and the Transport Committee had the limited opportunity to ask questions about the matter. If one credits Dr. Le Clair's comments about the impact of the CN Marine breakout decision on CN's finances, one wonders about CN's status as a Schedule C, Part II Crown corporation "not ordinarily dependent on appropriations" and operating "in a competitive environment" (Section 2.1(6) of the amended FAA).

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(1) Canada, President of the Treasury Board, Expenditure and Program Review, November, 1984, p. B.7.

(2) CN, Annual Report 1984, p. 7.

## CONCLUSION

In the past there have been revelations before the Public Accounts Committee of mismanagement in Crown corporations, notably Canadair's 1982 loss of \$1.4 billion which preoccupied that Committee for half of 1983. The two case studies described above also illustrate the need for caution in dealing with the accountability of Crown corporations. The new accountability regime in the amended FAA holds much promise both for government and Parliament. It will bear close watching to see how it functions in the years to come.

Much is in a state of flux on the Parliamentary side of the equation; however, the Government's recent response to the Third and Second Reports of the McGrath Committee (Special Committee on Reform of the House of Commons) heralds substantive and wide-ranging reform in, among other things, the Standing Committee system. Crown corporations' accountability to Parliament will inexorably be altered by the ongoing reforms of the House of Commons. It is for Parliamentarians to decide what meaning they wish to give the process of accountability so well launched in the new FAA.

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